

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARY DORMAN,

Plaintiff(s),

-against-

WESTBURY UNION FREE SCHOOL
DISTRICT,

Defendant(s).

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**REPORT AND
RECOMMENDATION**

CV 05-0019 (JS) (WDW)

WILLIAM D. WALL, United States Magistrate Judge:

On July 15, 2005, an initial conference was held on this matter and a scheduling order was entered. Both parties, including plaintiff pro se Mary Dorman, appeared at the conference. Since that time, however, Ms. Dorman has done nothing to prosecute her case. By order dated March 8, 2006, the court, both on the merits and unopposed, granted defendant's motion to compel responses to discovery requests and ordered plaintiff to provide outstanding discovery. Plaintiff failed to comply with the order, and further failed to appear at a conference scheduled for March 24, 2006, despite a warning that failure to appear could result in a recommendation that the case be dismissed for failure to prosecute.

By order dated April 12, 2006, the court extended plaintiff a final opportunity to prosecute her case and scheduled a conference for May 19, 2006. On May 18, 2006, Ms. Dorman contacted chambers and indicated that she wished to withdraw her claims. By order dated May 19, 2006, the undersigned directed Ms. Dorman to write a letter to Judge Seybert regarding withdrawal of her claims, and to submit that letter no later than June 16, 2006. Ms. Dorman was again warned that failure to comply would result in a recommendation of dismissal. Ms. Dorman has not submitted a letter to Judge Seybert, nor has she contacted the undersigned in any way.

Accordingly, the undersigned recommends that the case be dismissed, with prejudice, based on the plaintiff's repeated failures in complying with this court's orders, and her failure to prosecute. See Fed. R. Civ. P. 41(b). Rule 41(b) gives the district court power to dismiss a complaint "for failure to comply with a court order, treating noncompliance as a failure to prosecute." *Simmons v. Abruzzo*, 49 F.3d 83, 87 (2d Cir. 1995). It is well settled that a dismissal under Rule 41(b) "operates as an adjudication on the merits and that such a dismissal is with prejudice." *Hoffman v. Wisner Classic Mfg. Co.*, 927 F. Supp. 67, 71 (E.D.N.Y. 1996) (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 630-32 (1962)). Here, the plaintiff has failed to prosecute the case since July 2005 and failed to comply with the undersigned's orders of March 8, 2006 and May 19, 2006.

A copy of the Report and Recommendation is being sent by the Court to all parties. Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a courtesy copy to the undersigned within 10 days of service. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. §636 (b) (1); Fed. R. Civ. P. 72; *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
June 27, 2006

/s/ William D. Wall
WILLIAM D. WALL
United States Magistrate Judge